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10/055,474	01/23/2002	James L. Tracy	CM02045K	6374

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EXAMINER

ART UNIT

PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

10/055,474

Applicant(s)

TRACY ET AL.

Examiner

Jeff Piziali

Art Unit

2629

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 01 May 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.



J.P.
18 July 2006

Continuation of 10. Other (including any explanation in support of the above items):

The appellants are cordially thanked for the 'Brief on Behalf of Appellants Under 37 CFR 41.37' filed 1 May 2006. However, several items of non-compliance have been discovered in the brief requiring correction.

37 C.F.R. § 41.37(c)(1)(iii) requires, "A statement of the status of all the claims in the proceeding (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed" (see also MPEP § 1205.02).

The 'Brief on Behalf of Appellants Under 37 CFR 41.37' filed 1 May 2006 improperly includes extraneous information such as, "Claims 1-23 stand[ing] or fall[ing] together" as well as an unnecessary listing of all the different grounds of rejection (see Page 3 of the 'Brief on Behalf of Appellants Under 37 CFR 41.37' filed 1 May 2006).

Additionally, 37 C.F.R. § 41.37(c)(1)(vi) requires, "A concise statement of each ground of rejection presented for review." MPEP § 1205.02 further clarifies, "For example, the statement 'Whether claims 1 and 2 are unpatentable' would not comply with the rule, while the statements 'Whether claims 1 and 2 are unpatentable under 35 U.S.C. 103 over Smith in view of Jones,' and 'Whether claims 1 and 2 are unpatentable under 35 U.S.C. 112, first paragraph, as being based on a nonenabling disclosure' would comply with the rule."

The 'Brief on Behalf of Appellants Under 37 CFR 41.37' filed 1 May 2006 improperly lists the grounds of rejection as, for example, "Claims 8, 16, and 17 are rejected under 35 USC 112, first paragraph" (see Page 5 of the 'Brief on Behalf of Appellants Under 37 CFR 41.37' filed 1 May 2006). The appellants are respectfully encouraged to list all the grounds of rejection in the format detailed by MPEP § 1205.02.

Moreover, 37 C.F.R. § 41.37(c)(1)(viii) requires, "An appendix containing a copy of the claims involved in the appeal."

The 'Claims Appendix' section on page 13 of the 'Brief on Behalf of Appellants Under 37 CFR 41.37' filed 1 May 2006 provides an inaccurate copy of claim 16. The claim is missing single brackets around the text of, "actuation of" in line 5, "and" in line 13, and "." in line 15.

CFR § 1.121(c)(2) states, "The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived." Accordingly, appellants' use of single-brackets in the Amendment submitted 7 June 2005 did not delete any subject matter. Following proper amendment practice, the aforementioned text remains in pending claim language, and must be provided in the 'Claims Appendix' section's copy of claim 16.

By at least such reasoning, this 'Notification of Non-Compliant Appeal Brief (37 CFR 41.37)' is deemed necessary and proper at this time.

Although the examiner has attempted to be as thorough as possible, the lengthy appeal brief has not been checked to the extent necessary to determine the presence of all possible errors. Appellants' cooperation is requested in correcting any errors of which appellants may become aware in the brief.



J.P.
18 July 2006